

**Andrea D. Coit, OSB #002640**  
**acoit@eugenelaw.com**  
**Laura T.Z. Montgomery, OSB #934665**  
**lmontgomery@eugenelaw.com**  
HUTCHINSON COX  
940 Willamette Street, Suite 400  
P.O. Box 10886  
Eugene, Oregon 97440  
Telephone: (541) 686-9160  
Facsimile: (541) 343-8693  
Of Attorneys for Defendant Jody N. Cline

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
EUGENE DIVISION

**PAUL KWAKE**, an individual, **DANIEL CAMPBELL**, an individual, **DOROTHY HAWLEY**, an individual, and **GARY ROMINE**, an individual,

Plaintiffs,

vs.

**FARIBORZ PAKSERESHT**, in his official capacity as Director of Human Services, State of Oregon; and **ASHLEY CARSON-COTTINGHAM**, in her capacity as Director of Office of Aging and People with Disabilities, a division within the state Department of Human Services, State of Oregon; and **JODY N. CLINE**, in her capacity as Director of Senior and Disability Services, a division within the Lane Council of Governments,

Defendants.

---

Case No. 6:18-cv-603-JR

**DEFENDANT JODY N. CLINE'S REPLY TO PLAINTIFFS' RESPONSE TO DEFENDANT JODY N. CLINE'S MOTION TO DISMISS AMENDED COMPLAINT**

**INTRODUCTION**

Defendant Jody N. Cline's (Defendant Cline) Motion to Dismiss raised two distinct bases for dismissal: (1) Plaintiffs' failure to state a claim for relief against Defendant Cline under

42 U.S.C. § 1983, Title II of the ADA, or the Rehabilitation Act, and (2) that Plaintiffs do not seek any remedy that Cline, in her official capacity, can provide.

Plaintiffs responded, arguing essentially that the Court should deny the motion because they are *pro se* and, thus, their flawed pleading should be liberally construed. None of the arguments raised by Plaintiffs in their Response to Defendant Cline's Motion to Dismiss are relevant or raise an issue that should result in denial of the motion.

### **ARGUMENT**

Defendant Cline replies to Plaintiffs' enumerated arguments in the order presented.

#### **1. Pleadings Liberally Construed.**

In Plaintiffs' point one, Plaintiffs argue that Defendant Cline's Motion to Dismiss should be denied because Plaintiffs are *pro se* and, thus, the Court should liberally construe the Amended Complaint to plead a claim that results in the relief Plaintiffs seek. Liberal construction of pleadings is, of course, the Court's mandate in the construction of all pleadings, regardless if parties are *pro se* or not. However, liberal construction of Plaintiffs' Amended Complaint in the present case is not sufficient to create a claim for relief where there is none. Here, for the reasons set forth in Defendant Cline's Motion to Dismiss, Plaintiffs' claims against Defendant Cline should be dismissed with prejudice.

#### **2-5. Uniform Declaratory Judgments Act.**

Plaintiffs' points 2 through 5 simply recite the provisions of the Uniform Declaratory Judgments Act. While generally true statements of the law, again, these points raise no relevant argument against Defendant Cline's Motion to Dismiss or support any of Plaintiffs' claims against Defendant Cline. Here again, for reasons set forth in Defendant Cline's Motion to Dismiss, her motion should be granted with prejudice.

///

**6. Amended Complaint Seeks Injunctive Relief.**

Plaintiffs' point number six simply states what the Amended Complaint seeks, an order directing "LCOG to remove Marcy Yarbrough and Jordan Crowder from any further role involving any resident of Paul Kwake's adult foster care homes." As set forth in Defendant Cline's Motion to Dismiss, such an order is not appropriate in this case because Plaintiffs' Amended Complaint does not assert any claim for relief that could possibly support or result in such an order. Thus, the Court should grant Defendant Cline's Motion to Dismiss.

**7. Plaintiff Kwake's Claim That He Is A Fiduciary For The Other Plaintiffs And Can Thus Sue On Their Behalf.**

In point number seven, Plaintiff Paul Kwake (Plaintiff Kwake) apparently asserts that, to the extent Defendant Cline's Motion to Dismiss is based on Plaintiff Kwake's lack of standing to assert claims on the other Plaintiffs' behalf, he is the other Plaintiffs' "fiduciary" and thus entitled to sue on their behalf. However, there are no facts raised in Plaintiffs' Amended Complaint to support such a relationship. Plaintiff Kwake cannot simply assert that he is the other Plaintiffs' fiduciary without providing some evidence of a legal appointment.

**CONCLUSION**

Plaintiffs have raised no meritorious arguments in their Response to Defendant Cline's Motion to Dismiss. For the reasons set forth in Defendant Cline's Motion to Dismiss, the Court should grant the motion to dismiss all claims against Defendant Cline with prejudice.

DATED this 15<sup>th</sup> day of June, 2018.

HUTCHINSON COX

By: s/ Andrea D. Coit  
Andrea D. Coit, OSB #002640  
Laura T.Z. Montgomery, OSB #934665  
Of Attorneys for Defendant Jody N. Cline

**CERTIFICATE OF SERVICE**

I certify that on June 15, 2018, I served or caused to be served a true and complete copy of the foregoing **DEFENDANT JODY N. CLINE'S REPLY TO PLAINTIFFS' RESPONSE TO DEFENDANT JODY N. CLINE'S MOTION TO DISMISS AMENDED COMPLAINT** on the party or parties listed below as follows:

☒ Via First Class Mail, Postage Prepaid

Paul Kwake  
Daniel Campbell  
Dorothy Hawley  
Gary Romine  
1865 17<sup>th</sup> Street, Apartment C  
Springfield, Oregon 97477  
Email: paulkwakesr@gmail.com  
Pro Se Plaintiffs

I certify that on June 15, 2018, I served or caused to be served a true and complete copy of the foregoing **DEFENDANT JODY N. CLINE'S REPLY TO PLAINTIFFS' RESPONSE TO DEFENDANT JODY N. CLINE'S MOTION TO DISMISS AMENDED COMPLAINT** on the party or parties listed below as follows:

☒ Via CM / ECF Filing

Christina L. Beatty-Walters  
Patty Rincon  
Department of Justice  
100 SW Market Street  
Portland, Oregon 97201  
Of Attorneys for Defendants Pakseresht and Carson-Cottingham

HUTCHINSON COX

By: s/Andrea D. Coit  
Andrea D. Coit, OSB #002640  
Laura T.Z. Montgomery, OSB #934665  
Of Attorneys for Defendant Jody N. Cline